

## DID THE EARLY CHURCH ABSOLUTELY FORBID REMARRIAGE AFTER DIVORCE?

*Fecha de recepción: 13 de abril de 2018 / Fecha de aceptación: 6 de junio de 2018*

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*Abstract:* The possibility to remarry in the Catholic Church is still a matter of intense debate, also in the Latin Church. The historical-juridical research about the discipline of remarriage in the pre-Augustine writings and tradition demonstrates that the teaching of the complete indissolubility of marriage wasn't accepted by everyone, not even in the Western Church. The comment of Ambrosiaster to the Pauline teaching, in fact, demonstrates that the possibility to remarry wasn't always excluded, at least not until Augustin's teaching became the dominant tradition in the West.

*Keywords:* divorce; remarriage; indissolubility of marriage; Ambrosiaster; Augustine.

*Riassunto:* La possibilità di seconde nozze nella Chiesa cattolica è ancora oggi oggetto di un intenso dibattito, anche nella Chiesa di rito latino. L'indagine storico-giuridica sulla disciplina delle seconde nozze nella scrittura e nella tradizione pre-Agostiniana dimostra che l'insegnamento dell'assoluta indissolubilità del matrimonio non era uniformemente accolta, anche nella Chiesa occidentale. Il commento di Ambrosiaster all'insegnamento paolino, infatti, dimostra che la possibilità di seconde nozze non era sempre esclusa, almeno fino a quando l'insegnamento di Agostino diventò la tradizione dominante in occidente.

*Parole chiave:* divorzio; seconde nozze; indissolubilità del matrimonio; Ambrosiaster; Agostino.

## Introduction

The starting point of this article is the well-known volume of essays that appeared just prior to the 2014 and 2015 synods on the family. Titled *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church* and edited by the Rev. Robert Dodaro, O.S.A., then president of the Institutum Patristicum Augustinianum in Rome, this collection included contributions by five cardinals, an archbishop, and several other scholars<sup>1</sup>. It was a response to an address by Walter Cardinal Kasper, delivered at the invitation of Pope Francis to the Consistory of Cardinals on February 20 and 21, 2014<sup>2</sup>. Cardinal Kasper's lecture was widely viewed as representing the thinking of Pope Francis himself on the question of whether divorced and remarried Catholics might in some cases be admitted to Eucharistic communion.

More specifically, I would like to focus on chapter three in the Dodaro volume, "Divorce and Remarriage in the Early Church: Some Historical and Cultural Reflections," authored by John M. Rist, an emeritus professor of Classics and Philosophy at the University of Toronto. Although Rist devoted more attention to "cultural" reflections than to "historical" ones, he did make a number of historical claims, and these will form the subject matter of this essay. Rist's contribution, which relied extensively on the well-known historical study of Henri Crouzel<sup>3</sup>, shared the perspective of the other contributors to the Dodaro volume, namely to assert that neither the New Testament scriptures nor the patristic tradition supported the proposal of Cardinal Kasper. According to Rist, for the overwhelming majority of patristic authors, as for the New Testament writers, "second marriages (except, with some reservations, for widows and widowers) are forbidden during the lifetime of

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<sup>1</sup> DODARO, R., O.S.A. (ed.), *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church*, San Francisco 2014.

<sup>2</sup> Published in English as *The Gospel of the Family*, New York 2014.

<sup>3</sup> CROUZEL, H., *L'église primitive face au divorce: Du premier au cinquième siècle*, Paris 1970.

the original spouse. Among identifiable sources the only immediately obvious exception to that rule is Ambrosiaster<sup>4</sup>.

In his essay Rist did not devote any further attention to Ambrosiaster, except to observe in a footnote that Ambrosiaster's position involved the unusual view that women were not created in the image of God<sup>5</sup>. In place of a discussion of Ambrosiaster's view, Rist was content to refer the reader to the earlier study of Crouzel, who also had observed that Ambrosiaster was the only author in the first five centuries to permit remarriage after divorce<sup>6</sup>. In this essay I would like to challenge the claim that Ambrosiaster represented an isolated or idiosyncratic position in Western Christianity. I will argue that Ambrosiaster's position, far from being an outlier in the Western tradition, may have been the more prominent view prior to the appearance of Augustine's. There will be three parts to my argument: 1) First I will examine Ambrosiaster's discussion of divorce and remarriage and suggest that it rests on a close reading of the biblical texts and coheres with contemporary legal practice. 2) Second, I will discuss briefly Augustine's approach to the question of divorce and remarriage. I will argue that Augustine himself had doubts about whether the biblical texts supported his account of the indissolubility of marriage. 3) Third, I will review some of the evidence from the centuries before and after

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<sup>4</sup> RIST, J. M., «Divorce and Remarriage in the Early Church: Some Historical and Cultural Reflections», in DODARO, ed., *Remaining in the Truth of Christ*, pp. 64-92; quotation at 82. Later in his chapter, 90-91, Rist did acknowledge that Basil of Caesarea held a position similar to that of Ambrosiaster: "Nevertheless, Basil's name must be added to that of Ambrosiaster as a man prepared, less willingly though more fatefully, at least to tolerate a second marriage after divorce in limited circumstances."

<sup>5</sup> RIST, «Divorce and Remarriage», p. 82, n. 14: "Ambrosiaster was a priest in late fourth-century Rome whose uniquely ultra-Pauline position—he thinks the Christian partner can remarry after the collapse of a 'mixed' marriage—also includes denying that women are created in God's image (and on unusual grounds)." In support of his view, RIST cited my article «The Paradise of Patriarchy: Ambrosiaster on Women as (Not) God's Image», in *Journal of Theological Studies*, n.s. 43 (1992), pp. 447-69.

<sup>6</sup> CROUZEL, *L'église primitive*, 274: "L'Ambrosiaster est donc le seul écrivain ecclésiastique des cinq premiers siècles à permettre clairement le remariage: à l'homme seul, après une separation pour inconduite; à l'homme et à la femme, abandonnées par leur conjoint incroyant....Il est en outré assez paradoxal de constater, puisque l'Orient et l'Occident vont prendre dans la suite des disciplines inverses à propos du remariage, que le seul auteur qui le permette dans les cinq premiers siècles est un Latin."

Ambrosiaster and argue that his approach to the problem of divorce and remarriage may have been shared by other authorities in the Western Church. The result of this inquiry will show that there was greater diversity of opinion and policy on divorce and remarriage in the early church than is often acknowledged.

## 1. THE EVIDENCE OF AMBROSIASTER

Sometime around the year 380 the anonymous biblical interpreter, whom later generations have named “Ambrosiaster,” wrote a commentary on the epistles of St. Paul<sup>7</sup>. It is the earliest Latin commentary on Paul to have survived in its entirety from antiquity. The author, who seems to have wished to remain anonymous, was almost certainly a presbyter in the church at Rome, perhaps presiding over one of the cemetery churches outside of the city walls<sup>8</sup>. His writings generally present a moderate, clerical view of ecclesiastical life, and they were known to several of his contemporaries, such as Jerome, Augustine, and Pelagius, although these authors seem to have been unaware of his true identity. The writings of Ambrosiaster gained even greater prominence in the Middle Ages when the Pauline commentary was attributed to Ambrose of Milan, and another work of his, the *Questions on the Old and New Testaments*, was ascribed to Augustine in the manuscript tradition<sup>9</sup>.

Ambrosiaster’s approach to biblical texts was usually very careful and respectful of the literal sense, although he was always interested in the import of the

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<sup>7</sup> On the origins of the name “Ambrosiaster,” see KRANS, J., «Who Coined the Name ‘Ambrosiaster’?» in KRANS, J., LIETAERT PEERBOLTE, B. J., SMIT, P.-B. & ZWIEP, A. (eds.), *Paul, John, and Apocalyptic Eschatology: Studies in Honour of Martinus C. de Boer*, Leiden 2013, pp. 274–281. Krans has found the earliest reference to «Ambrosiaster» in the 1580 *Notationes* of Franciscus Lucas Brugensis.

<sup>8</sup> For this suggestion see LUNN-ROCKLIFFE, S., *Ambrosiaster’s Political Theology*, Oxford 2007, pp. 80–86.

<sup>9</sup> For an overview and introduction to Ambrosiaster, see LUNN-ROCKLIFFE, *Ambrosiaster’s Political Theology*, & HUNTER, D. G., «The Significance of Ambrosiaster», *Journal of Early Christian Studies* 17 (2009), pp. 1–26. A new translation and introduction to Ambrosiaster’s Pauline commentary has recently appeared: *Ambrosiaster’s Commentary on the Pauline Epistles*, vol. 1: *Romans*. Trans. with notes by DE BRUYN, T. S., with an Introduction to the *Commentary* by COOPER, S. A., DE BRUYN, T. S., & HUNTER, D. G., Atlanta 2017. Volume 2 of *Ambrosiaster’s Commentary on the Pauline Epistles*, containing the remainder of the Pauline commentary, translated by Cooper and Hunter, will appear in 2018 or 2019.

letter for the contemporary life of the church. When he came to Paul's discussion of marriage, divorce, and remarriage in the First Letter to the Corinthians, Ambrosiaster explicitly advanced the view that Paul had forbidden remarriage to a woman who divorced her husband because of his adultery, but allowed remarriage to a man, if he divorced his wife because of her adultery. The textual basis of Ambrosiaster's view was 1 Corinthians 7:10-11, which reads: "*To the married I give the charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband)—and that the husband should not divorce his wife*"<sup>10</sup>.

The first point to note is that Ambrosiaster paid close attention to the gender distinctions in the Pauline text. He first addressed the question of whether women were allowed to remarry after divorcing their husbands for adultery, and he argued unequivocally that they did not have this right:

*"This is the apostle's advice: that if the wife leaves her husband because of his bad behavior, she should remain unmarried. Or be reconciled to her husband. But if she cannot exercise self-control, he says, since she does not desire to struggle against the flesh, she should be reconciled to her husband. For it is not permitted for a woman to remarry, if she divorces her own husband on account of fornication or apostasy or if he seeks to use her under the compulsion of his lewd desires, since the woman, as the inferior party, does not enjoy the same rights as the man, who is the superior. But if her husband commits apostasy or desires to enjoy his wife in a perverted manner, the woman can neither marry another man nor return to her husband"*<sup>11</sup>.

<sup>10</sup> I have cited the RSV translation. Ambrosiaster based his comments on an early Latin version of the bible, the *Vetus Latina*, not the original Greek. As presented in CSEL 81/2: 75, the text reads: *His autem qui matrimonio iuncti sunt, praecipio non ego, sed dominus: Uxorem a viro non discedere; quodsi discesserit, manere innuptam, aut viro reconciliari; et vir ne uxorem dimittat, virum uxorem non dimittere*. A preliminary account of the Latin text has been prepared by FRÖHLICH, U., ed. *Epistula ad Corinthios I*, VLB 22, Freiburg 1995-1998. See also the edition of Ambrosiaster's Pauline text by VOGELS, H. J., *Das Corpus Paulinum des Ambrosiaster*, BBB 13, Bonn 1957, p. 7, which omits the words *et uir ne uxorem dimittat* from the lemma as presented in the CSEL edition.

<sup>11</sup> AMBROSIASTER, *In ep. ad Cor. primam* 7:11 (CSEL 81/2, pp. 74-75; trans. is my own): "*Hoc apostoli consilium est, ut si discesserit propter malam conuersationem uiri, iam innupta maneat. Aut uiro reconciliari. Quodsi continere se, inquit, non potest, quia pugnare non uult contra carnem, uiro reconcilietur. Non enim permittitur mulieri, ut nubat, si uirum suum causa fornicationis dimiserit aut apostasiae aut si [inlicite] impellente lasciuiam usum quaerat uxoris, quia inferior non omnino hac lege utitur qua potior. Si tamen apostatet uir aut usum quaerat uxoris inuertere, nec alii potest nubere*"

Ambrosiaster assumes here that women are allowed to divorce their husbands in cases where the husbands are guilty of sexual impropriety or apostasy, but they are not allowed to marry again. Behind Ambrosiaster's position here is the clear influence of the saying regarding divorce in the Gospel of Matthew, which he cited verbatim immediately below. In Matthew's version (though not in Mark and Luke) an exception to the prohibition of divorce is made "in the case of *porneia*," which was rendered as *fornicatio* in Ambrosiaster's Latin bible.

Ambrosiaster then turned to the second half of 1 Corinthians 7:11 and argued explicitly that men had a right not given to women, namely the right to remarry after divorcing their wives for adultery:

*"And a husband should not divorce his wife. He says that a husband should not divorce his wife. But the following words are to be understood: Except on account of fornication. He did not add the words that he wrote concerning the woman: But if she separates, she should remain as she is, because it is lawful for a man to marry another woman, if he divorces a wife who sins. For a man is not bound by the law in the same way as a woman is, for the man is the head of the woman"*<sup>12</sup>.

There are several features of Ambrosiaster's position that deserve comment. First, he has taken quite literally the distinction in the biblical text between Paul's command to women—"the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband)"—and the explicit command given to men: "A husband should not divorce his wife," where no prohibition of remarriage is given. It is debatable, of course, whether Paul might have intended his prohibition of remarriage also to apply to the man who divorced his

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*mulier nec reuerit ad illum.*" The word *inlicite* in brackets is found only in the *recensio prior* (alpha) of Ambrosiaster's commentary, i.e., the earlier version.

<sup>12</sup> AMBROSIASTER, *In ep. ad Cor. primam* 7, pp. 10-11 (CSEL 81/2, p. 74; trans. is my own): "*Et uir ne uxorem dimittat, uirum uxorem non dimittere. Subauditur autem: excepta causa fornicationis. Et ideo non subiecit sicut de muliere dicens: quodsi discesserit, manere sic, quia uiro licet ducere uxorem, si dimiserit [uxorem] peccantem, quia non ita lege constringitur uir sicut mulier; caput enim mulieris uir est.*" The word *uxorem* in brackets was added in the *recensio posterior* (gamma) of Ambrosiaster's commentary. The CSEL edition has presented the words *uirum uxorem non dimittere* as part of the biblical lemma, but these words are Ambrosiaster's paraphrase of the biblical text just cited: *Et uir ne uxorem dimittat.*

wife, but Ambrosiaster is correct in his strict reading of the text, namely that Paul did not give the same prohibition to the man that he gave to the woman.

John Rist has pointed to the fact that Ambrosiaster had unusual notions regarding women and that he was one of the very few early Christian writers who explicitly denied that women possess the image of God. Rist's point, as I understand it, was to underscore the eccentric character of Ambrosiaster's theology and to emphasize that his views on divorce and remarriage were an anomaly in the Western tradition. It is true that Ambrosiaster's theological interpretation of the image of God, and especially his denial of it to women, was unusual. But it is also the case that Ambrosiaster based his interpretation as much on the social and legal status of women in the Roman Empire as on the biblical texts. For example, when discussing the image of God in one of his *Quaestiones*, Ambrosiaster referred specifically to the exclusion of women from certain legal roles as evidence of their inferior status in relation to men:

*“For how can it be said that woman is the image of God, when clearly she is subject to the dominion of the male and does not possess authority (auctoritatem)? For she is not able to teach, nor to be a witness (testis), nor to take an oath (fidem dicere), nor to serve as a judge (iudicare): how much less is she able to give commands (imperare)!”<sup>13</sup>.*

This appeal to Roman legal practice was a common feature both in Ambrosiaster's *Quaestiones* and in his Pauline commentary, and numerous scholars have noted Ambrosiaster's unusual interest in Roman law and his efforts to elucidate the connections between different kinds of law, such as the natural law, the Mosaic Law, and Roman law<sup>14</sup>.

<sup>13</sup> *Quaestiones veteris et novi testamenti* 45.3, *De imagine* (CSEL 50:83): “*Quo modo enim potest de muliere dici, quia imago dei est, quam constat dominio uiri subiectam et nullam auctoritatem habere? Nec docere enim potest nec testis esse neque fidem dicere nec iudicare: quanto magis imperare!*”

<sup>14</sup> The foundational study is by HEGGELBACHER, O., *Vom römischen zum christlichen Recht: Juristische Elemente in den Schriften des sog. Ambrosiaster*, Freiburg 1959. See also GEERLINGS, W., «Das Verständnis von Gesetz im Galaterbriefkommentar des Ambrosiaster», in ALAND, B. et al. (eds.), *Die Weltlichkeit des Glaubens in der Alten Kirche: Festschrift für Ulrich Wickert zum siebzigsten Geburtstag*, Berlin 1997, pp. 101–13; LUNN-ROCKLIFFE, *Ambrosiaster's Political Theology*, pp. 50–57; SOUTER, *Study of Ambrosiaster*, pp. 23–31. My own account of Ambrosiaster's



I stress the influence of Roman law on Ambrosiaster's thought because his emphasis on the double-standard—that is, the different requirements for men and women that he read into the Pauline texts—may have resulted as much from the unequal status of women in Roman law as from his peculiar theology of the divine image. This is especially the case with adultery. In Roman law adultery involved sexual relations by a married woman with a man who was not her husband; extra-marital sexual activity by a man might be considered *stuprum*, if it involved an unmarried woman or widow of respectable status, but it was not adultery. Extra-marital sexual activity by a married man with a slave, prostitute, or other low-status woman had no legal bearing at all.

This is relevant to my present argument because Ambrosiaster's position on the acceptability of remarriage for a man who divorced his wife because of her adultery was not at all eccentric from the perspective of Roman law. The notion that a wife's adultery might be considered a definitive breaking of the marital bond was entirely consistent with Roman legal perspectives. Ever since the appearance of the Emperor Augustus's marriage laws, adultery had been punished as a public crime. Husbands had been required to bring charges against their adulterous wives, or else risk being prosecuted for *lenocinium* or pimping<sup>15</sup>. Moreover, as Judith Evans Grubbs has argued, Constantine's marriage legislation was even harsher on wives who wished to divorce than on their husbands<sup>16</sup>. According to *Codex Theodosianus* 3.16.1, issued by Constantine to the Praetorian Prefect Ablabius in 331, a wife could not send a notice of divorce to her husband on the grounds that he was a drunkard or gambler or womanizer. She had to prove that he was a murderer, a poisoner, or disturber of tombs. The husband, however, could divorce his wife for adultery or any

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legal knowledge is forthcoming in a volume from Cambridge University Press edited by Philip Lyndon Reynolds.

<sup>15</sup> See the material cited in EVANS GRUBBS, J., *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, London 2002, p. 84.

<sup>16</sup> GRUBBS, E., *Women and the Law*, pp. 202-203.



other serious crime<sup>17</sup>. I am not suggesting that Ambrosiaster's teaching matched legal practice in all of its particulars; rather, my claim is that Ambrosiaster's position fit well into a culture in which a married woman's sexual transgressions drew more serious criticism than those of a married man. As Evans Grubbs has put it, Ambrosiaster "reveals the same misogyny as Constantine's law"<sup>18</sup>.

I would like to make one further observation about the views of Ambrosiaster, which should cause us to be cautious about dismissing his teaching as eccentric or anomalous. Recent scholarship on Ambrosiaster has revealed that he was a careful thinker and well informed about contemporary church practices. For example, he provides important evidence about Christian marriage customs at Rome, including some of the earliest testimony to the bestowal of nuptial blessings<sup>19</sup>; he had reflected a great deal on the nature of the offices of bishop and presbyter<sup>20</sup>; he even provides some of the very earliest evidence of the discipline of permanent sexual continence imposed on the higher ranks of the clergy, evidence that is contemporary with the canonical decrees of Popes Damasus and Siricius<sup>21</sup>. No one doubts that Ambrosiaster reflects contemporary church practice in these matters; the same consideration, I suggest, should be extended to his account of divorce and remarriage.

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<sup>17</sup> CT 3.16.1, cited in Evans Grubbs, *Women and the Law*, 203: "It is pleasing that a woman not be permitted to send a notice of divorce to her husband because of her own depraved desires, for some carefully contrived cause, such as his being a drunkard, or gambler or womanizer. However, neither should husbands be permitted to divorce their own wives for just any reason whatsoever. But in the sending of a notice of divorce by a woman these crimes only are to be looked into: if she has proven that her husband is a murderer or a preparer of poisons or a disturber of tombs, so that only then, after being praised, she shall receive back her entire dowry.... Also in the case of men, if they send a notice of divorce, it is fitting that these three crimes be inquired into: if they wanted to repudiate an adulteress or a preparer of poisons or a go-between."

<sup>18</sup> GRUBBS, E., *Women and the Law*, p. 204, in reference to AMBROSIASTER, *Quaest.* 115.12.

<sup>19</sup> *Quaestiones veteris et novi testamenti* 127.3 (CSEL 50: 400): "cuius rei traditio et in sinagoga mansit et nunc in ecclesia celebratur, ut dei creatura sub dei benedictione iungatur, non utique per praesumptionem, quia ab ipso auctore sic data est forma."

<sup>20</sup> See BÉVENOT, M., «Ambrosiaster's Thoughts on Christian Priesthood», in *Heythrop Journal* 18 (1977), pp. 152-164.

<sup>21</sup> *Quaestiones veteris et novi testamenti* 127.35-36 (CSEL 50, pp. 414-416); *Commentarius in epistolam Pauli ad Timotheum* 3, pp. 12-13 (CSEL 81/3, pp. 268-270).

## 2. AUGUSTINE'S DOUBTS ON DIVORCE AND REMARRIAGE

This brings me to the second step in my argument: the place of Augustine in the development of the Western tradition on divorce and remarriage. Augustine of Hippo is well known as the primary architect of the Western theology of marriage and, in particular, the notion of the indissolubility of marriage. Less well known is the degree to which Augustine persistently expressed doubts about the validity of his own teaching. Augustine's doubts on these matters, however, have not gone entirely unnoticed by scholars. In a very thorough study of the evolution of Augustine's thought on divorce, Marie-François Berrouard has demonstrated that Augustine was always reticent to state a definitive view on the question of whether a man who divorced his wife because of her adultery might be free to marry again<sup>22</sup>. In a more recent examination of Augustine's *Retractationes* Goulven Madec has observed that Augustine acknowledged his dissatisfaction with his own solution to the problems posed by the biblical texts on divorce and remarriage<sup>23</sup>. The Orthodox bishop, Peter L'Huillier, also noted Augustine's doubts about his own teaching, although John Rist has suggested that this was "self-indulgent psychologizing" on the part of the Orthodox bishop<sup>24</sup>.

One does not have to resort to "psychologizing" of any sort to recognize that Augustine expressed a great deal of doubt about his own views. In an essay that appeared in a recent issue of the American journal *Augustinian Studies*, I have documented these doubts in great detail<sup>25</sup>. We see them expressed explicitly in the text of *De adulterinis coniugiis*, Augustine's latest and most complete discussion of

<sup>22</sup> BERROUARD, M.-F., «Saint Augustin et l'indissolubilité du mariage. Évolution de sa pensée», in *Recherches Augustiniennes* 5 (1968), pp. 139-155.

<sup>23</sup> MADEC, G., *Introduction aux "Révisions" et à la lecture des oeuvres de saint Augustin*. Collection des Études Augustiniennes. Série Antiquité, 150, Paris 1996, p. 72: "Il faut noter aussi qu'Augustin ne se flatte pas d'avoir résolu à perfection ces problèmes très difficiles." See also the studies of Nautin and Reynolds cited below.

<sup>24</sup> L'HUILLIER, P., «The Indissolubility of Marriage in Orthodox Law and Practice», in *St. Vladimir's Theological Quarterly* 3 (1988), p. 207, cited in RIST, «Divorce and Remarriage» 81, n. 13.

<sup>25</sup> «Augustine's Doubts on Divorce: Reconsiderations on Remarriage», in *Augustinian Studies* 48 (2017), pp. 161-182.

divorce and remarriage, as well as in various passages of the *Retractationes*, the book in which Augustine reviewed his own writings. Augustine's doubts stemmed primarily from the ambiguity of the biblical texts on divorce and remarriage, although it also is possible that he was aware of the views of Ambrosiaster<sup>26</sup>. For the purpose of my argument here, the significance of Augustine's doubts is that they stand in marked contrast to the apparent certainty that Ambrosiaster expressed about his teaching on remarriage. As Philip Lyndon Reynolds has observed in his extensive study of Western legislation on marriage in the patristic and medieval periods, Ambrosiaster gave no indication that he was conscious of advocating an unusual position: "*Rather, he aims merely to explain why the position is what he assumes it to be*"<sup>27</sup>.

I would like to present some of the evidence of these doubts, though a fuller account can be found in the article mentioned above. I will begin with Augustine's famous review of his own writings, the *Retractationes*, composed in 426 or 427. In his note on *De adulterinis coniugiis* Augustine offered the following observation:

*"I wrote two books on adulterous marriages, following the scriptures as closely as possible, with the intention of solving a very difficult problem (difficillimam quaestionem) I do not know whether I was able to do this in a very clear way. Quite the contrary, I do not think that I concluded the matter, although I shed light on many of its obscurities. An intelligent reader will be able to judge it"*<sup>28</sup>.

Augustine here frankly acknowledged that his discussion in *De adulterinis coniugiis* had not adequately resolved all of the questions posed by the biblical texts on the issue of divorce and remarriage.

<sup>26</sup> We know, for example, that Augustine had read portions of Ambrosiaster's Pauline commentary, which he cited in several places.

<sup>27</sup> LYNDON REYNOLDS, P., *Marriage in the Western Church: The Christianization of Marriage during the Patristic and Early Medieval Periods*, Leiden 1994, p. 183.

<sup>28</sup> Retr. 2.57 (CCSL 57, p. 136, trans. Boniface Ramsey, WSA, *Revisions*, I/2, p. 161): "*Scipsi duos libros de coniugiis adulterinis quantum potui secundum scripturas, cupiens soluere difficillimam quaestionem. Quod utrum enodatissime fecerim nescio; immo uero non me peruenisse ad huius rei perfectionem sentio, quamuis multos sinus eius aperuerim, quod iudicare poteri quisquis intellegenter legit.*" I have modified Ramsey's "Indeed" to "Quite the contrary" to capture the adversative sense of the words *immo uero*.

In the text of *De adulterinis coniugiis* itself, written six or seven years earlier (ca. 421), Augustine had acknowledged a similar deficiency in his work. This two-book treatise was a response to the inquiries of an otherwise unknown correspondent named Pollentius, probably a bishop or presbyter, who had criticized Augustine's earlier two books, *On the Lord's Sermon on the Mount*, for the strict position taken there on the indissolubility of marriage.<sup>29</sup> Near the conclusion of the first book of the treatise, Augustine frankly confessed to Pollentius the doubts that he had about his own work:

*"After dealing with these points and discussing them in this way to the best of my ability, I am not unaware that the whole question of marriage is still very unclear and most complex (quaestionem... obscurissimam et implicatissimam). I would not be so bold as to claim that I have yet unraveled it fully, either in this work or any other, or even that I could do so now if pressed"*<sup>30</sup>.

Here again, six or seven years before composing his *Retractationes*, Augustine clearly expressed doubts about the adequacy of his treatment of the issue.

What were the problems in the biblical texts that caused Augustine to have such doubts about his own teaching? It is clear that the central issue derived from the two passages in Matthew's Gospel that recorded Jesus's prohibition of divorce and remarriage "except on account of fornication," that is, the famous "Matthean exception." Found in Matthew's version of the Sermon on the Mount and in his later account of a conflict with the Pharisees, the critical passages read as follows:

*"It was also said, «Whoever divorces his wife, let him give her a certificate of divorce.» But I say to you that every one who divorces his wife, except on the ground of unchastity (porneia), makes her an adulteress; and whoever marries a divorced woman commits adultery"* (Matt 5:31-32, RSV).

<sup>29</sup> On the identity of Pollentius as a cleric, see CROUZEL, H., *L'église primitive*, 337, n. 52, who summarizes the scholarly discussion.

<sup>30</sup> *Adult. coniug.* 1.25.32 (CSEL 41, p. 379, trans. KEARNEY, R., WSA, *Marriage and Virginity*, I/9, p. 163): "*His ita pro meo modulo pertractatis atque discussis quaestionem tamen de coniugiis obscurissimam et implicatissimam esse non nescio. Nec audio profiteri omnes sinus eius uel in hoc opere uel in alio me adhuc explicasse uel iam posse, si urgere, explicare.*" I have added the word "most" to Kearney's "complex" to express the superlative in the word *implicatissimam*.

And in the later pericope: “*And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery*” (Matt 19:9, RSV)<sup>31</sup>.

Augustine had several questions about the biblical texts. One pertained to the semantic range of *porneia*, which was rendered as *fornicatio* in his Latin bible: did it refer only to a sexual offense, or did it admit of a wider range of meanings, such as apostasy or even avarice, as was sometimes the case in scripture?<sup>32</sup> In two early books, *On the Lord’s Sermon on the Mount*, Augustine had argued that the term probably had a very wide range of meanings. In the *Retractationes*, however, Augustine expressed doubts about this interpretation, although he remained undecided on the question.

But there was another, even more difficult issue raised by the Matthean exception. Matthew 5:31-32 says nothing about the possibility of remarriage for a man who has divorced his wife because of her adultery. Matthew 19:9 does address the question of remarriage, but the words, “*And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery,*” could be read as suggesting that if a man divorced his wife for her adultery, the prohibition of remarriage would not apply. This is precisely how Pollentius and Ambrosiaster had interpreted the exceptive clause in Matthew’s Gospel, although Pollentius thought that the Matthean exception also allowed remarriage to the innocent wife.

Augustine was aware of this problem, and he attempted to buttress his argument against remarriage by citing 1 Corinthians 7:10-11, where Paul had stated “*the wife should not separate from her husband (but if she does, let her remain single*

<sup>31</sup> In *s. dom. m.* 1.14.39 (PL 34, p. 1248) AUGUSTINE cited Mt 5:32 thus: “*Ego autem dico uobis, Quicumque dimiserit uxorem suam excepta fornicationis causa, facit eam moechari; et qui solutam a uiro duxerit, moechatur.*” The Greek word translated as “unchastity” in the Revised Standard Version was *porneia*, which was rendered as *fornicatio* in Augustine’s bible.

<sup>32</sup> *S. dom. m.* 1.16.43 (PL 34, p. 1251): “*Exoritur hic altera quaestio, cum Dominus causa fornicationis permittat dimitti uxorem, quatenus hoc loco intelligenda sit fornicatio: utrum quousque intelligunt omnes, id est, ut eam fornicationem credamus dictam quae in stupris committitur; an quemadmodum Scripturae solent fornicationem uocare, sicut supra dictum est, omnem illicitam corruptionem, sicut est idololatria uel auaritia, et ex eo iam omnis transgressio legis propter illicitam concupiscentiam.*”

or else be reconciled to her husband), and that the husband should not divorce his wife.” According to Augustine, Paul had made it clear that remarriage after divorce was not an option for the wife. The problem with Augustine’s invocation of the Pauline text is that Paul did not explicitly apply the same strictures to men as to women. Paul had simply said, “*the husband should not divorce his wife*,” and, as we saw above, Ambrosiaster had taken this as grounds for upholding a distinction between the rules that applied to men and those that applied to women.

Augustine, however, was not willing to accept this double standard. In *De adulterinis coniugiis* he tried to argue that the sayings of Jesus and the teachings of Paul had to be understood to apply to men and women equally. He appealed, for example, to the earlier passage in 1 Corinthians 7:4, where Paul had said that neither the husband nor the wife had authority over their own bodies; from this Augustine concluded that the apostle had articulated a principle of equality that should also obtain in the matter of divorce and remarriage. But Augustine knew that this was a surmise on his part and that he was filling in the blanks, so to speak, where scripture had not been explicit, and this was the ultimate source of Augustine’s dilemma.

### 3. THE PRE-AUGUSTINIAN TRADITION

This brings me to the third and final step in my argument, which I will pose initially as a question: Are there additional reasons to suppose that Ambrosiaster’s view was not an anomaly in the Western church and that Augustine’s position was actually the innovation? As I have argued thus far, scripture could be plausibly cited on behalf of several positions, and both Ambrosiaster’s confident assertion of his view and Augustine’s doubts about his own views might suggest that the weight of tradition rested with Ambrosiaster. Can we find additional evidence to support the claim that Ambrosiaster, and not Augustine, more closely represented earlier Christian tradition?

There exist several important studies that have raised questions about Crouzel’s book and that have offered a more nuanced account of early Christian

tradition on divorce and remarriage<sup>33</sup>. I have already mentioned the article by Berrouard on the evolution of Augustine's thinking. But the most important work on the present question was a lengthy article by Pierre Nautin, published in 1974, which was largely a response to Crouzel<sup>34</sup>. Nautin presented extensive textual evidence suggesting that the view of Ambrosiaster was both the dominant tradition in the first three centuries and that it remained so even into the Carolinian period. Subsequent scholars, such as Philip Lyndon Reynolds<sup>35</sup> and Riccardo Bof and Conrad Leyser<sup>36</sup>, have confirmed Nautin's argument and raised serious questions about the prevalence of the Augustinian position prior to the early Middle Ages.

This is not the place to survey all of the available evidence, but a selection of significant texts will serve to establish the point that Ambrosiaster's position was by no means an anomaly in the Western Christian tradition. With the exception of a passage from *The Shepherd* of Hermas, composed at Rome early in the second century, there is no text from the first four centuries that clearly and unequivocally prohibited a man from remarrying after divorcing his first wife for adultery<sup>37</sup>. Even Tertullian, who was a staunch opponent of remarriage in any form, even after the death of a spouse, seems to have regarded the remarriage of a woman after divorce as equivalent to the remarriage of a widow, at least in his earliest writings. For

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<sup>33</sup> One of the most serious deficiencies of the study by John Rist is his lack of engagement with the extensive secondary literature on divorce and remarriage in the early church. He appears to have relied almost exclusively on the work of Crouzel; Rist cited several books by Giovanni Cereti only to dismiss them without extensive argument. Rist, p. 83, n. 15, even stated explicitly that "there is no need to rehearse earlier 'literature'" on the subject.

<sup>34</sup> NAUTIN, P., «Divorce et remariage dans la tradition de l'Église latine», in *Recherches de science religieuse* 62 (1974), pp. 7-54 ; see also MUNIER, C., «L'échec du mariage dans l'église ancienne», in *Revue de droit canonique* 38 (1988), pp. 26-40.

<sup>35</sup> In addition to the work of Reynolds cited above in n. 27, see now his *How Marriage Became One of the Sacraments*, Cambridge 2016, pp. 148-150.

<sup>36</sup> BOF, R. & LEYSER, C., «Divorce and Remarriage between Late Antiquity and the Early Middle Ages: Canon Law and Conflict Resolution», in COOPER, K. & LEYSER, C. (eds.), *Making Early Medieval Societies: Conflict and Belonging in the Latin West, 300-1200*, Cambridge 2016, pp. 155-180.

<sup>37</sup> *The Shepherd*, Mandates 4.29. Hermas insisted that a man should remain unmarried after divorcing his adulterous wife, so that he would be able to take her back, if she repented. But this was to happen only once, Hermas insisted. He did not indicate whether or not the man could remarry, if the wife repeated her sin.



example, in his letter *Ad uxorem* he tried to discourage remarriage altogether, but allowed that a woman might marry another Christian after the death or divorce of her first husband:

*“Now, recognizing the fact of human frailty, let us turn our attention to an alternative course of action [i.e., remarriage to Christians]. We are led to do this because of the conduct of certain women who, when given an opportunity of practicing continence by reason of a divorce or the death of a husband, not only rejected the opportunity of living so good a life, but, in contracting a second marriage, were not even mindful of the prescription that they should “above all marry in the Lord”<sup>38</sup>.*

Only in his later works, written when he was fully under the influence of the “New Prophecy,” did Tertullian take a firm stance against all second marriages, whether of the widowed or of the divorced<sup>39</sup>.

Later Latin writers, such as Lactantius, also appear to have sanctioned the remarriage of a man who divorced his first wife for adultery. Both in his *Institutiones Diuinae* and in his *Epitome* of the *Institutiones*, Lactantius cited the Matthean exception as if it allowed a man to remarry after divorcing his wife for infidelity:

*“Whoever marries a woman who has been divorced by her husband is an adulterer, as is the man who divorces his wife in order to marry another woman, except if she is guilty of adultery. For God does not want the body to be separated and torn apart<sup>40</sup>”.*

The most obvious reading of Lactantius’s text is that a man was allowed to remarry, if he divorced his first wife because of her adultery. Likewise in his *Epitome* of the *Divinae Institutiones*, Lactantius stated, “God has commanded that a wife

<sup>38</sup> *Ux.* 2.1.1 (CCSL 1: 383, trans. William P. Le Saint, ACW 13, 23): “Nunc ad secunda consilia conuertamur, respectu humanae infirmitatis, quarundam exemplis admonentibus, quae diuortio uel mariti excessu, oblata continentiae occasione, non modo abiecerunt opportunitatem tanti boni, sed ne in nubendo quidem rursum disciplinae meminisse uoluerunt, ut in Domino potissimum nuberent.”

<sup>39</sup> For a full discussion of the Tertullian texts, see MATTEI, P., «Le divorce chez Tertullien: Examen de la question à la lumière des développements que le *De Monogamia* consacre à ce sujet», in *Revue des Sciences Religieuses* 60 (1986), pp. 207-234.

<sup>40</sup> *Inst.* 6.23 (CSEL 19: 569-570, trans. is my own): “Haec sunt quae ad continentiam praecipuntur a deo. Sed tamen, ne quis diuina praecepta circumscribere se putet posse, adduntur illa, ut omnis calumnia et occasio fraudis remoueatur, adulterum esse qui a marito dimissam duxerit et eum qui praeter creimen adulterii uxorem dimiserit, ut alteram ducat: dissociari enim corpus et distrahi deus noluit.”

*should not be divorced, unless she has been convicted of adultery, so that the bond of the conjugal pact may never be dissolved, unless infidelity has broken it.*"<sup>41</sup> As Pierre Nautin has observed, Lactantius seems to have regarded marriage in Roman legal terms as a "pact" (*foedus*), which was effectively dissolved by the "crime of adultery" (*crimen adulterii*)<sup>42</sup>.

But perhaps the most telling sign of Western practice in regard to divorce and remarriage can be found in the canons of several synods, published both before and after the time of Augustine, which appear to have allowed the remarriage of a man who has divorced his first wife because of her adultery. In 314 the Council of Arles issued a decree that discussed the status of men who divorced their wives for adultery. Canon 11 gives evidence of both a general custom that prohibited remarriage of men who divorced their wives and the possibility of exceptions to this rule:

*"Concerning those men who find that their wives are committing adultery—these being young Christian men who are forbidden to marry—it is decreed that as far as possible (quantum possit) they should be counseled not to marry again as long as their wives are alive, even though the latter are adulteresses"*<sup>43</sup>.

This canon makes it clear that the bishops assembled at Arles wished to discourage the remarriage of men who divorced their wives for adultery. Nevertheless, this was put on the level of a "counsel" (*consilium*), not a prohibition<sup>44</sup>. In the case of young men, it seems that a pastoral exception was being made: they were urged not to remarry *quantum possit*. It is also significant that this canon was

<sup>41</sup> *Epit.* 61 (66) (CSEL 19: 748, trans. is my own): "*Ideo praecipit non dimitti uxorem nisi crimine adulterii reuictam, ut numquam coniugalis foederis uinculum nisi quod perfidia ruperit resoluatur.*"

<sup>42</sup> NAUTIN, «Divorce et remariage dans la tradition de l'Église latine» 17; cf. REYNOLDS, *Marriage in the Western Church*, 182-183, who doubts that Lactantius would have extended the same privilege to the woman who divorced her husband for adultery.

<sup>43</sup> *Concilium Arelatense*, c. 11 (10) (CCSL 148: 11, trans. Reynolds, *Marriage in the Western Church*, 181): "*De his qui coniuges suas in adulterio deprahendunt, et idem sunt adulescentes fideles et prohibentur nubere, placuit ut, quantum possit, consilium eis detur ne alias uxores, uiuentibus etiam uxoribus suis licet adulteris, accipiant.*"

<sup>44</sup> NAUTIN, «Divorce et remariage dans la tradition de l'Église latine» 21.

addressed only to men. Nothing was said about a similar policy for women; it may have been assumed that women would not have been allowed to remarry. The only restriction laid upon women was that they not be married to non-Christians.

Another significant case is the set of canons attributed to the early fourth-century council of Elvira. These canons must be used with extreme caution because numerous scholars have raised serious questions about the unity and authenticity of this collection<sup>45</sup>. However, even if these canons do not derive from a single early fourth-century council, they are still relevant to the present discussion, since they would illustrate later western practice. Canons 8 and 9 of this collection deal only with the remarriage of women who have divorced their husbands. Canon 8 states that if they have remarried after divorcing their husbands for no reason, they should be excluded from communion for life. Canon 9 states that if they have remarried after divorcing their husbands because of adultery, they should abstain from communion until the first husband has died, although communion may be given in case of illness.<sup>46</sup> It is noteworthy that there are no equivalent canons in the collection regarding the remarriage of men who have divorced their wives for adultery. This absence may suggest that the restrictions placed on women who remarried did not exist in the same form for men, a fact that would support Ambrosiaster's position.

Finally, there is evidence from a number of councils held in the fifth and sixth centuries that further attests that the position outlined by Ambrosiaster persisted, despite the emergence of Augustine's theology of indissolubility<sup>47</sup>. I will cite two examples. The Council of Vannes in Brittany, held sometime between 461 and 491,

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<sup>45</sup> See the discussion of Josep Vilella, «The Pseudo-Iliberritan Canon Texts», in *Zeitschrift für Antikes Christentum* 18 (2014), pp. 210-259, who argues, convincingly to my mind, that the canons attributed to the "council of Elvira" actually derive from a variety of different times and places.

<sup>46</sup> Can. 8: "*Item feminae quae nulla praecedente causa reliquerint viros suos et alteris se copulaverint, nec in finem accipiant communionem*"; can. 9: "*Item femina fidelis quae adulterum maritum reliquerit fidelem et alterum ducit, prohibeatur ne ducat; si duxerit, non prius accipiat communionem nisi quem reliquit, de saeculo exierit; nisi forte necessitas infirmitatis dare compulerit.*" Text in F. Gori, ed., *I canoni dei concili della chiesa antica. II. I concili Latini. 3. I concili spagnoli* (Rome: Augustinianum, 2013), 44.

<sup>47</sup> Discussed in NAUTIN, «Divorce et remariage dans la tradition de l'Église latine» pp. 47-54; REYNOLDS, *Marriage in the Western Church*, pp. 183-187.

issued the following decree that, in the words of Philip Lyndon Reynolds, “simply translates [the exception clause of] Matthew 19:9 into ecclesiastical law”<sup>48</sup>:

*“We have decreed that those men who after leaving their wives, as is said in the gospel, «except on account of fornication», have married other women without having given proof of the adultery, should likewise be cut off from communion, lest through our indulgence their sins are overlooked and provide an invitation to others to the license of error”*<sup>49</sup>.

This canon indicates that it was normal procedure in the Gallic church of the fifth century for a man to be allowed to remarry, if he divorced his first wife for adultery. The provision added at the Council of Vannes was that this second marriage was permissible only if the adultery of the wife was formally proven. The bishops at Vannes clearly wished to avoid the abuse of false accusations of adultery against wives, but they do not appear to have fundamentally challenged the right of men to remarry, if such an accusation was sustained.

In a similar vein, the Council of Agde, which took place in 506 under Caesarius of Arles, specified that men who wished to divorce and remarry had to prove the charges against their wives in an episcopal court. Men who divorced their wives and contracted other marriages were to be excluded from communion, but only in cases where they have not previously indicated the reasons for the breakup of the marriage and secured a judgment against the guilty wife *apud episcopos comprouinciales*<sup>50</sup>. It is evident from these canonical texts that in some parts of the western church the position represented by Ambrosiaster persisted long after Augustine had articulated his stricter view on the matter. It would appear that a

<sup>48</sup> REYNOLDS, *Marriage in the Western Church*, p. 184.

<sup>49</sup> *Concilium Veneticum*, c. 2 (CCSL 148: 152, trans. is my own): “*Eos quoque, qui relictis uxoribus suis, sicut in euangelio dicitur excepta causa fornicationis, sine adulterii probatione alias duxerint, statuimus a communione similiter arcendos, ne per indulgentiam nostram praetermissa peccata alios ad licentiam erroris inuident.*”

<sup>50</sup> *Concilium Agathense*, c. 25 (CCSL 148: 204): “*Hi vero saeculares, qui coniugale consortium culpa graviore dimittunt vel etiam dimiserunt et nullas causas discidii probabiliter proponentes, propterea sua matrimonia dimittunt, ut aut illicita aut aliena praesumant, si antequam apud episcopos comprouinciales discidii causas dixerint et prius uxores quam iudicio damnentur abiecerint, a communione ecclesiae et sancto populi coetu, pro eo quod fidem et coniugia maculant, excludantur.*”

woman's adultery constituted a dissolution of the marriage and justified the remarriage of her husband, as long as the offense was properly proven before church authorities.

#### CONCLUSION

In this article I have argued that the historical survey presented by John Rist in the volume *Remaining in the Truth of Christ* is problematic. Neither the biblical texts nor the patristic interpretation of these texts was as simple as claimed. The evidence of Ambrosiaster's Pauline commentary shows that there was another tradition in the Western church that preceded Augustine's emphasis on the complete indissolubility of marriage, and, if the arguments of Nautin and others are correct, the pre-Augustinian tradition survived for a while after Augustine. While it is true that the teaching of Augustine did eventually become the dominant tradition in the West, it is clear that it was not the only tradition, nor was it immediately accepted even in the western church. Perhaps in our own day, when the question of divorce and remarriage is the subject of heated debate within the Roman Catholic Church, it is worth remembering that both scripture and tradition can speak with more than one voice.

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